

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES D. SEXTON,	:	
Plaintiff,	:	
vs.	:	Case No. 3:13cv00097
CAROLYN W. COLVIN, Acting Commissioner of the Social Security Administration,	:	District Judge Thomas M. Rose
Defendant.	:	Chief Magistrate Judge Sharon L. Ovington

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**REPORT AND RECOMMENDATIONS<sup>1</sup>**

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On April 3, 2013, Plaintiff filed a *pro se* Complaint in this Court seeking judicial review from a final decision issued by the Commissioner of the Social Security Administration. Plaintiff, however, did not file a Statement of Errors in response to Defendant's Answer as required by the Sixth Amended Magistrate Judges' General Order No. 11. Consequently, on August 27, 2013, the Court Ordered Plaintiff to Show Cause – not later than September 20, 2013 – why his Complaint should not be dismissed due to his failure to prosecute and his failure to file the required Statement of Errors. (Doc. #7). Plaintiff was warned that “[f]ailure to file a Statement of Errors, request an extension of time, or otherwise respond, may result in dismissal of this case for failure to prosecute.” To date, Plaintiff has not responded nor has he filed a Statement of Errors.

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<sup>1</sup> Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

The Court finds that Plaintiff has engaged in a clear pattern of delay by not responding to this Court's Order and by not filing a Statement of Errors. Plaintiff has not submitted any explanation for these failures. Absent such an explanation, and in light of the above circumstances, Plaintiff's clear pattern of delay warrants dismissal of this case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6<sup>th</sup> Cir. 1991); *Harris v. Callwood*, 844 F.2d 1254, 1256 (6<sup>th</sup> Cir. 1988).

**IT IS THEREFORE RECOMMENDED THAT:**

Plaintiff's Complaint be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

September 23, 2013

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s/Sharon L. Ovington  
Sharon L. Ovington  
Chief United States Magistrate Judge

## **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen (14) days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen (17) days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(c), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).